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Supreme Court of the United States

OCTOBER TERM 1942

No. 284

H. T. OVERSTREET, R. BRAZLE, L. L. GARVIN,

Petitioners,

v.

THE NORTH SHORE CORPORATION,

Respondent.

BRIEF ON BEHALF OF RESPONDENT, THE NORTH SHORE CORPORATION

ROSWELL P. C. MAY,
W. GREGORY SMITH,
Counsel for Respondent.

BLEAKLEY, PLATT & WALKER,
New York City.
Of Counsel.

SMITH & AXTELL,
Jacksonville, Florida.

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THE NORTH SHORE CORPORATION,

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BRIEF ON BEHALF OF RESPONDENT, NORTH SHORE CORPORATION

Opinions Below

The opinion of the District Court (R. 8-10) is reported in 43 F. Supp. 445. The opinion of the Circuit Court of Appeals (R. 11-13) is reported in 128 F. (2d) 450.

Jurisdiction Involved

This Court has already exercised its jurisdiction under U. S. Code Tit. 28, Sec. 347 (a) to review the instant case, by entering, on October 12, 1942, its order granting a writ of certiorari to the Circuit Court of Appeals for the 5th Circuit (R. 13).

Questions Presented

Whether employees of a corporation who are engaged in the maintenance and operation of a toll road located wholly within a state, but over which some interstate traffic passes, are engaged in interstate commerce, and as such are subject to the provisions of the Fair Labor Standards Act.

Statement

The case is before this court as a result of the granting of a motion to dismiss the complaint (R. 8). The facts set forth in the complaint must, therefore, for the purposes of this appeal, be accepted by respondent, and we have no quarrel with the statement thereof made by petitioners or the Administrator.

For the convenience of the court, there is set forth in Appendix B a replica of a map of the road in question taken from "Toll Roads in the United States as of December 31, 1940" published by Federal Works Agency, Public Roads Administration. It will be observed that while respondents' road connects at one end with United States Route 17 as the latter approaches Jacksonville, Florida, it does not connect with any road at the other end. In other words, it is a dead end road. It affords a means of communication with Fort George Island by means of the draw bridge which it operates. In the 1940 Federal Census the population of "Prec. 37, Fort George", Duval County, Florida, was 98.

In accepting the facts stated in the complaint with respect to the amount of interstate as distinguished from intrastate traffic passing over the road, we reserve the right to dispute those facts in the event that a trial of this case on the merits should be necessary, and also to

argue that the amount of interstate traffic over the road comes within the *de minimis* principle or in any event is less than twenty per cent of the entire traffic.[1]

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[1] The figure of twenty per cent is suggested by reason of the following release of the U. S. Department of Labor, dated October 17, 1942:

"Questions have been raised concerning the application of the Fair Labor Standards Act to maintenance employees working in office buildings in which no goods are produced for interstate commerce and in which none of the tenants there engages in transactions in interstate commerce.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, U. S. Department of Labor, explained today that the Division would consider the Act inapplicable to maintenance employees in these situations, since it is unlikely that the courts would find such employees within the scope of the Act. Typical questions involved relate to those office buildings in which some companies rent space to house part of their clerical or office staffs, but which conduct their production and commercial activities elsewhere. In the opinion of the Wage and House Division such buildings are not in interstate commerce and so not covered.

Last June the Supreme Court in *Kirschbaum* v. *Walling*, 62 Sup. Ct. 1116, held that maintenance employees of a loft building in which the tenants produced goods for interstate commerce are covered by the Act. The Division has held that maintenance employees in buildings in which the tenants carry on interstate commerce activities are similarly covered by the Wage and Hour Act. For purposes of enforcement the Administrator has adopted the rule that he would regard 20 per cent as the test of whether a substantial part of the building is devoted to interstate commerce activities. If less than 20 per cent of the building is occupied by tenants therein engaged in interstate commerce or in the production of goods for interstate commerce, the Division will take no action to apply the Act to the maintenance employees."

ARGUMENT

POINT I

The petitioners are not engaged in interstate commerce and are, therefore, not entitled to the benefits of the Fair Labor Standards Act.

At the outset, we wish to emphasize that no question of power is raised in this brief. Cases involving power are cited herein, but the purpose is not to support a denial of the power of Congress to regulate the wages of employees engaged in the operation and maintenance of privately owned toll roads or bridges, but in support of other points of law decided therein.

This case involves solely the construction of the Act and the question of law as to whether the employees in question are engaged in interstate commerce.

In petitioners' brief, the Court is asked to adopt a "liberal" construction. We suggest that the case does not involve the choice between a so-called liberal and strict construction. The problem is to ascertain the intent of Congress, and that intent can be readily determined from an examination of the Act itself, and its legislative history. The method of approach in cases involving the extent of the coverage of this Act contemplated by Congress was formulated by this Court in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517.

Applicable sections of the Act are set forth in Appendix A.

A

In regulating the wages of employees engaged "in commerce" (as distinguished from employees engaged "in the production of goods for commerce") Congress did not intend to regulate wages of employees engaged, not in commerce, but simply in occupations affecting, related to, or necessary to commerce.

(1) *The Fair Labor Standards Act.*

At the outset there should be noted the two great divisions of the Act. It regulates the wages and hours of employees engaged (1) "in commerce", and also (2) "in the production of goods for commerce" (Sections 6 and 7). The duality of the statutory scheme is carried out by identical language in other provisions such as those dealing with Industry Committees (Section 5), Wage Orders (Section 8), and in the statement of policy (Section 2). It is also carried out in the definitions (Section 3):

> "(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof."

> "(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

Trade, transportation, transmission, and communication had, long prior to the passage of the Act, been included in the legal definition of commerce. On the other hand production, manufacturing and mining had, prior to the passage of the Act, been held not in themselves to consti-

tute interstate commerce. *Kidd* v. *Pearson*, 128 U. S. 1; *U. S.* v. *Knight*, 156 U. S. 1; *United Mine Workers* v. *Coronado Coal Company*, 259 U. S. 344. But the power, by appropriate legislation, to regulate activities in such industries because of their affecting commerce had been sustained. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.[2]

The obvious scheme of the Act, therefore, as indicated by the continued use of the dual expressions "in commerce" and "in the production of goods for commerce" and by the separate definitions of "commerce" and "produced", respectively, was to cover employees engaged (1) in what hitherto had been defined as interstate commerce and (2) in certain occupations particularly mentioned not theretofore recognized as themselves constituting interstate commerce, *i. e.*, the occupations specified in the definition of "produced." The latter group was undoubtedly included upon the theory that although such employees were not engaged in commerce, the payment of sub-standard wages to them would injuriously affect commerce. This is borne out by the finding and declaration of policy contained in Section 2.

Under its power to regulate, Congress could unquestionably have included occupations and industries "affecting" commerce other than those in fact included in its definition of "produced". That it did not do so is significant. It emphasizes the inescapable conclusion from the language used that Congress did not intend to extend the benefits of the Act to employees who are not engaged in commerce, but simply in occupations "affecting", "related to", or "necessary to", commerce except in instances

[2] This case was decided prior to the passage of the Fair Labor Standards Act and was referred to in the Senate Debate on the Conference Agreement as having been considered by the Conference Committee which formulated the bill which was finally passed. 83rd Cong. Rec., 75th Cong., 3rd Sess., Part 8, pp. 9175, 9169.

where such latter occupations are specifically set forth in the Act. It would be incongruous for Congress specifically to have included production, manufacturing, and mining, as it did, upon the theory that they "affect" commerce and at the same time to have had the concealed, unexpressed intention of including other occupations and industries which, like manufacturing and mining, do not constitute interstate commerce, but which might properly be held substantially to affect, or to be closely related to, interstate commerce, and as such subject to regulation. As this Court has pointed out, the history of Congressional regulatory legislation warrants the opposite assumption, for it justifies the generalization that in matters of this kind "* * * those charged with the duty of legislation are reasonably explicit." *Kirschbaum* v. *Walling*, *supra*; *Federal Trade Commission* v. *Bunte*, 312 U. S. 349.

The point is further illustrated by the inclusion, in the definition of "produced", of the statement that an employee shall be deemed to be engaged in the production of goods if such employee is employed "in any process or occupation necessary to the production thereof". Here Congress in its regulatory scheme went beyond production itself and specifically included occupations "necessary to" production, indicating an intent, in this field, to extend its regulatory power to extreme limits, if not to exhaust it. But the definition of "commerce," as distinguished from "produced," does not indicate any such intention. Commerce is said to mean "trade, commerce, transportation, transmission or communication," but not "any occupation necessary to" trade, commerce, transportation, transmission or communication.

Where Congress has sought to regulate activities, whether in intrastate or in interstate commerce, it is of course the province of this Court to determine its power to do so. But where, as here, Congress has admittedly acted within its power, the problem before this Court is

simply to determine the field which Congress has entered, and in doing that, primary resort must be had to the structure of the Act and the language used. Here the omission of "occupation necessary to" in the definition of "commerce" and its inclusion in the definition of "produced" is unmistakable evidence of an intent not to include "related" occupations in the definition of "commerce", even though such related occupations may "affect" or be "necessary to" commerce itself. (See *Cudahy Packing Co.* v. *Holland*, 315 U. S. 57, in which this Court, construing certain other provisions of this Act, said: "Because of these differences, it seems to us fairly inferable that the grant of authority to delegate the power of inspection, and the omission of authority to delegate the subpoena power, show a legislative intention to withhold the latter.")

(2) *Legislative History.*

The legislative history of this Act was presented to this Court in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, and it said:

> "The history of the legislation leaves no doubt that Congress chose not to enter areas which it might have occupied. As passed by the House, the bill applied to employers 'engaged in commerce in any industry affecting commerce.' See H. Rep. No. 2182, 75th Cong. 3rd Sess., p. 2; 83 Cong. Rec. 7749-50. But the bill recommended by the conference applied only to employees 'engaged in commerce or in the production of goods for commerce.' H. Rep. No. 2738, 75th Cong. 3rd Sess., pp. 29-30; 83 Cong. Rec. 9158, 9266-67."

The reason why Congress chose to withdraw from its proposed regulation, except with respect to production, employers engaged "in any industry affecting commerce" is not known. The proceedings of the Conference Committee are not available. No explanation was given by any of the conferees in either the Senate or the House debates

on their Report. But the significance of what the conferees did and what Congress did in enacting the Conference bill instead of the original House bill should not be, and has not been, overlooked by this Court.[3] The action taken discloses a clear intent not to include employees engaged "in any industry affecting commerce", except those engaged in the production of goods for commerce and included in the definition of "produced".

It being clear that it was not the intent of Congress to include within the definition of "commerce" employees engaged in occupations "affecting" or "necessary to" commerce, the question in this case is narrowed down to whether the employees here involved were engaged in "commerce" as defined in the Act, and as that definition must be construed. Before taking up the question, however, may we point out that, while the decision in *Kirschbaum & Co. v. Walling, supra*, furnishes the method of approach in construing the Act, the case itself is otherwise not in point. It dealt with maintenance employees of loft buildings in which goods were being produced for commerce. Those employees were held to come within the language of Subdivision (j) of Section 3 defining "produced", and including employees employed in any "occupation necessary to the production thereof". The employees were therefor held to be engaged "in production of goods for commerce", but *not*, "in commerce".

The employees involved in this case have no connection at all with production. Their occupation is at most related to that phase of commerce incorporated in the term "transportation", which in turn is included in the definition of "commerce".

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[3] *Kirschbaum* v. *Walling, supra*; *Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U. S. 349. See also *Cudahy Packing Co.* v. *Holland, supra*, wherein it was said: "Nor can we assume * * * that it is any part of the judicial function to restore to the Act what Congress has taken out of it."

B

The petitioners are not engaged in interstate commerce or transportation.

Needless to say these petitioners are not engaged in commerce in the sense of buying and selling. The question is whether they are engaged in that form of interstate commerce, known before the Act as, and specified within the definition of commerce in the Act, as "transportation". Petitioners do not claim that any branch of commerce other than transportation is involved.

The distinction between the maintenance and operation of a highway and the carriage of goods and persons over the highway would seem to be fundamental. All that the maintenance man does is to facilitate, make easy, smooth the path of the traveler engaged in commerce, or the carrier transporting goods or persons. "The one occupation is essentially local," the other may involve interstate activity.

"That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it." *Wickard et al.* v. *Filburn* (No. 99, this Term), 63 S. Ct. 82, 89. See also *Federal Trade Commission* v. *Bunte Brothers, Inc.*, *supra*, at p. 351.

In France, the corvée, or required work on the roads, has been given as one of the minor causes of the social unrest leading to the Revolution. In this country, roadwork has apparently been more palatable, judging by an anonymous jingle, date unknown, but prior to 1905.

> "Oh, our life was tough and tearful, and its toil was often fearful,
> And often we grew faint beneath the load.
> But there came a glad vacation and a sweet alleviation,
> When we used to work our tax out on the road.
> When we used to work our tax out, then we felt the joys of leisure,
> And we felt no more the prick of labor's goad;
> Then we shared the golden treasure of sweet rest in fullest measure,
> When we used to work our tax out on the *road*".

Hulbert's "Historic Highways", Vol. 11, pp. 103-104. The taxes worked out were undoubtedly *local* taxes. At the present time such a statute is in effect in Florida. Florida Statutes, 1941, Sec. 343.18.

Historically the two have in fact been separate and distinct. In the main, the construction and maintenance of the highways has been a sovereign function, exercised by the state, or by counties or by towns, political subdivisions thereof, or in more recent years by the Federal Government. On the other hand, the carriage of goods and persons over the highways has been essentially a private function, effected in earlier times by wagoners[5] and draymen, more recently by trucking and bus companies. When the latter become common carriers, they are, of course, subject to certain special principles of common law, and those engaged in transportation have been subject to state and federal regulations, but, in the main, the business of carriage over the highway has been a private function. In the development of the country, therefore, generally speaking, the sovereign,[6] whether Federal or State, has maintained the highways, and the citizens have transported goods and persons over them.

The heyday of the toll road or turnpike was in the early part of the last century[7]. As commerce and travel increased from south to north and, more particularly, from east to west, the demand for better roads grew faster than the financial ability of the states to supply it. Toll roads and turnpike companies were organized which constructed and maintained improved roads.[8]

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[5] Hulbert's "Historic Highways", Vol. 11, pp. 45, 62.

[6] "In English history, highway designated the main public road, which was the subject of special royal enactments controlling the policing thereof; it was popularly known as the *King's highway*." Funk & Wagnall's New Standard Dictionary.

[7] Hulbert's "Historic Highways, Vol. 11, page 67.

[8] "The stagecoach heralded the new age of road-building, but these new macadamized roads were few and far between; many roadways were widened and graded by states or counties, but they remained dirt roads; a few plank roads were built. The vast number of roads of better grade were built by one of the host of road and turnpike companies which sprang up in the first half of the nineteenth century." (Hulbert Historic Highways, Vol. 11, p. 67.) Most famous of these toll roads was Lancaster Turnpike, running from Philadelphia to Lancaster, the rise and decline of which is described in the same volume, pp. 73 *et seq.*

Tolls were charged, not for the transportation of persons or property by the companies, but for the use of the improved roads.[9] These companies maintained facilities for those engaged in transportation and commerce, but their function was regarded as sovereign, they received franchises from the state and were regarded as operating under delegated sovereign power.[10]

In furnishing facilities for and purveying to those engaged in the carriage of goods and persons, these companies were not unlike the innkeepers and blacksmiths of old and the filling stations and tourists camps of to-day.

With the advent of the railroad there came about the anomaly, not always appreciated, of the combination into one entity of the sovereign function of constructing and

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[9] Note to *Virginia Canon Toll Road Co.* v. *Colorado*, 37 L. R. A. 711.

[10] "A toll road is a public highway, differing from ordinary public highways chiefly in this: that the cost of its construction in the first instance is borne by individuals, or by a corporation, having authority from the state to build it, and, further, in the right of the public to use the road after its completion, subject only to the payment of toll. The acceptance by the corporation of the franchise to construct the road, and the operation thereof, constitute a dedication of the same as a public highway. The right of a corporation or of an individual to exact tolls is not of common right, and, in this country, does not exist in the absence of a grant from the legislature. This power of collecting tolls is a part of the sovereign power of the state, which the legislature may delegate in return for a supposed public good, and the grant of the power may be conferred with any restrictions which the legislature may see fit to impose, and the grantee takes subject to all such limitations; and the grant of the right is the equivalent of, or compensation for, the cost of building and maintaining the road. 2 Waterman, Corp. § 419; Ang. & A. Priv. Corp. § 4; *Com.* v. *Wilkinson*, 16 Pick. 175, 26 Am. Dec. 654; *Wood* v. *Truckee Turnp. Co.*, 24 Cal. 474; *Craig* v. *People*, 47 Ill. 487." (*Virginia Canon Toll Road Co.* v. *People, ex rel. Vivian*, 22 Colo. 429, 37 L. R. A. 711.)

Respondent herein, The North Shore Corporation, operates under franchise granted pursuant to Chapter 10490 (No. 468), Florida Laws 1925 as amended by Chapter 12464 (No. 659) Florida Laws 1927.

maintaining the road and the private function of transporting goods and persons. In the railroad companies themselves, the distinction is preserved in their departmentalized organization. The function of the Maintenance of Way Department which maintains the roadbed is in practice quite separate from the Operating Department, which runs the trains.[11]

But the combining of the two functions in single corporations has at times led some courts and others to lose sight of the essential difference between them. However, not always, and not by this Court in *Lake Superior & Miss. R. R. Company* v. *U. S.*, 93 U. S. 442, decided in 1876. This case involved one of the land grant railroads which had received federal lands with the proviso that

> "said railroad shall be, and remain, a public highway for the use of the government of the United States, free from all toll or other charge for [upon] the transporation of any property or troops of the United States."

Relying on this clause, the Government demanded that the company transport troops for nothing. The company contended that the clause simply meant that the government could use the highway without charge, but that it would have to transport its troops over the highway itself, furnishing equipment and power. In sustaining the latter contention, this Court said (Italics ours):

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[11] "The very fact that the operation of a railroad presents three distinct phases compels specialization in the conduct of these phases; departmentalism arises from specialization. For maintenance of way, maintenance of equipment, and conducting transportation there must be three sets of employees. The work of the employees of each set must be directed by an officer expert in that kind of work. There must be an engineer maintenance of way, a master mechanic, a train master. Here are the terms of the engineering department, the department of rolling equipment, and the department of transportation." Loree, Railroad Freight Transportation, 1922, page 134. See also id. page 3.

"It is somewhat singular that a provision apparently so simple in its terms should give rise to such a wide difference of opinion as to its true construction. The difficulty arises from the peculiar character of a railway as a means of public travel and transportation. The case of a turnpike or a canal would have furnished no difficulty whatever. *Those thoroughfares are usually constructed and owned by companies who have nothing to do with transportation thereon. They merely furnish the thoroughfare.* Had the provision in question related to public works of this kind, it would have been clear that the right reserved to the Government would have been merely the right to use the works themselves (the turnpike or the canal) free from toll. The words 'free from all toll or other charge for the transportation of property or troops' would have referred, by necessary implication, to transportation performed by the government itself, either in its own carriages or vessels, or in carriages or vessels procured and employed at its expense. No one would imagine for a moment that the turnpike or canal company would be bound to furnish the means of transportation, much less the propelling power and labor for performing it."

* * * * * * *

"We know, as well as we know the sense of any phrase in the English language which has a historical meaning and application, what is meant when a railroad is spoken of in a law as a 'public highway'. We know that it refers to the immovable structure stretching across the country, graded and railed for the use of the locomotive and its train of cars.

But it is not alone in charters which contemplate the creation of railroads as public highways that we find evidence of *the understood distinction between railroads as mere thoroughfares, and the operations to be carried on upon them by means of locomotives and cars.* This is manifest from the fact, amongst other things, that express power is invariably given (if intended to be conferred) to the railroad company to equip its road, and to transport goods and passengers thereon and charge compensation therefor. This practice evidently springs from the conviction that a

railroad company is not necessarily a transportation company, and that, to make it such, express authority must be given for that purpose, in compliance with the rule that no power is conferred upon a corporation which is not given expressly or by clear implication."

The distinction between the two functions was again recognized by this Court in *New York, Lake Erie & Western R. R. Co.* v. *Pennsylvania Railroad Co.*, 158 U. S. 431. In that case a corporation owned a railroad wholly within the State of Pennsylvania, which it leased to another railroad which operated trains moving in interstate commerce. The question was whether the State of Pennsylvania could validly impose taxes on the tolls paid by the one company to the other for the use of the railroad. In sustaining the tax, this Court said (p. 438):

"The tax complained of is not laid on the transportation of the subjects of interstate commerce, or on receipts derived therefrom, or on the occupation or business of carrying it on. It is a tax laid upon the corporation on account of its property in a railroad, and which tax is measured by a reference to the tolls received."

In *Kentucky & I. Bridge Co.* v. *Louisville & N. R. Co.*, 37 Fed. 567, an incorporated bridge company, brought a proceeding to compel a common carrier to establish connections with it. One of the questions raised was whether the petitioner was a common carrier of interstate commerce so as to enable it to claim the benefit of certain provisions of the Interstate Commerce Act. In holding that it was not, the Court said (at p. 616):

"The distinction between such an incorporated bridge or highway, established and maintained for use by common carriers and others, upon paying compensation for such use in the way of 'tolls', however graduated, and that of an incorporated common carrier engaged in transporting property for hire, is well defined. It is

pointed out and illustrated in the case of *Boyle* v. *Railroad Co.*, 54 Pa. St. 310, and *Railroad Co.* v. *U. S.* 93, U. S. 442-445."

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The powers and franchises conferred upon petitioner find their legitimate scope and operation in the building, operating and maintaining of its bridge and approaches thereto, for the public purposes it was intended to subserve—that of furnishing and forming a highway over which common carriers and others should have the right or privilege of transporting goods or passing, as they pass over a turnpike, a canal, or a ferry, upon paying reasonable tolls for the use of the structure or thoroughfare; and do not in any way constitute petitioner a common carrier of goods, authorized to equip its road, or to charge compensation for transporting goods on or over the same" (p. 616).

Even in the case of railroad companies, therefor, this Court has thus recognized the separate function of ownership and maintenance of the road, which it has likened to the function of toll road or turnpike companies (*Lake Superior & Miss. S. R. R. Co.* v. *U. S.*, *supra*) and the business of carrying goods and passengers over the road—"the transportation phase."

In so far as bridge companies are concerned there has never been any question but that the business of owning and operating a toll bridge over a navigable water over which interstate traffic may pass is not interstate commerce.

In *Henderson Bridge Co.* v. *Kentucky*, 166 U. S. 150, the company owned and operated a bridge across the Ohio River between Kentucky and Indiana, and levied tolls on traffic passing over it. The Commonwealth of Kentucky sought to collect a franchise tax which was resisted upon the ground that it was a tax on the carrying on of interstate commerce. In sustaining the tax, this Court said (p. 153):

"Clearly the tax was not a tax on the interstate business carried on over or by means of the bridge, because

the bridge company did not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge."

In 1934, almost forty years later, the same question again came before this Court in *Detroit International Bridge Company* v. *Corporation Tax Appeal Board of the State of Michigan*, 294 U. S. 83, the only difference being that this time the Court was called upon to determine whether the Bridge Company was engaged in foreign commerce because it operated a bridge between Michigan and Canada. A state tax upon the franchise was resisted upon the ground that "the only power it [the Corporation] has is to engage exclusively in foreign commerce", and that to tax the privilege of doing this would burden such commerce and offend the Federal Constitution. The lower courts sustained the tax. This Court stated:

"The argument for reversal is, of course, ineffective if ownership and operation of the bridge do not constitute foreign commerce."

After discussing and quoting the statement in the *Henderson Bridge Company case*, *supra*, that the bridge company did not carry on an interstate business, but that that business was carried on by those using the bridge and paying tolls for the privilege, this Court said:

"We find no adequate reason for departing from the view so expressed. The judgment of the Court below must be affirmed."

Perhaps the most recent case emphasizing the distinction is *Gouax* v. *Boyay*, 5 Cir., 105 Fed. 2d, 256, cert. denied 308 U. S. 607, wherein reimbursement was sought for tolls paid to a Bridge Company for passage over the bridge of troops and munitions of the Government. The Court said:

"A bridge connecting one State with another is an instrumentality of interstate commerce, and the use

of it and the charges or tolls demanded Congress may regulate. Covington & Cincinnati Bridge Co. v. Kentucky, 154 U. S. 204, 14 S. Ct. 1087, 38 L. Ed. 962. A bridge which crosses a navigable water, although wholly within a single State, may be an obstruction to navigation, and its construction and use may for this reason be regulated by Congress, though interstate commerce be not involved."

. . . . . .

"The Bridge Company does not *transmit* or *transport* these [troops and munitions across the bridge], but merely permits the *transit* of them." (Matter in brackets ours.)

The authorities cited, and particularly the *Henderson Bridge Company* and *Detroit Bridge Company* cases in this Court, establish (1) that the function of ownership, maintenance and operation of a bridge or a highway is separate and distinct from the function of carrying persons or goods over the same, and (2) that the business of a corporation maintaining and operating such a bridge or highway is not interstate commerce even though the traffic passing over the same may be interstate traffic.

A corporation is a legal entity, a fictitious person. Of necessity it must carry on its business through agents or employees. If, therefore, the business of a corporation, in its entirety, is not, in law, interstate commerce, then it *must* follow, inevitably, that no one of the employees carrying on such business can be engaged in such commerce. The sum of the parts cannot be greater than the whole. If the whole business is not interstate commerce then no part of that business carried on by an employee can be such commerce.

We appreciate that the test under the act is not necessarily the business of the employer, but the occupation of the employee, and also that the argument was made in *Kirschbaum* v. *Walling, supra*, that the business of maintaining a building was a local business and hence that

none of the employees could be engaged in interstate commerce. But, in that case this Court found that the business of the employer was *pro tanto* a business necessary to the production of goods for commerce.[12] In this case, however, it is submitted, no such finding can be made because this Court has definitely ruled that the business of an employer such as respondent is not interstate commerce. It has said that companies such as respondent "have nothing to do with transportation" over the roads maintained by them, and it has held that they do not transact an interstate business. (*Lake Superior & Miss. S. R. R. Co.* v. *U. S.*, *supra*, and *Henderson Bridge Co.* v. *Kentucky*, *supra*.)

It is argued by the petitioners and the Administrator that the *Henderson Bridge Company* and the *Detroit Bridge* cases are inapplicable because they were tax cases. If we were questioning the power of Congress to regulate the activities of Bridge Companies the argument might be valid, for the power of a State to tax does not necessarily preclude the power of Congress to regulate. The two are not mutually exclusive. But here there is no question of power. The question is whether or not the business is interstate commerce, and that is the precise question decided by this Court in the *Henderson Bridge* and the *Detroit Bridge* cases. In those cases the tax was attacked as a burden upon the interstate or foreign commerce claimed to be conducted by the corporation. The court did not decide that the tax was not a burden on the commerce. What it decided was that the business was not interstate commerce. and having so decided the attack

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[12] For a discussion of this question in lower courts since the *Kirschbaum* case see *Johnson* v. *Dallas Downtown Development Co.*, 5 Wage Hour Rept. 984 (decided December 10, 1942, C. C. A. 5); *Cochran* v. *Florida Nat. Bldg. Corporation*, 45 F. Supp. 830; *Bartholome* v. *Balt. Fire Patrol & Despatch Co.*, 6 Wage Hour Rept. 21; *Lofther* v. *First National Bank of Chicago*, 6 Labor Cases 61,259; see also *Tate* v. *Empire Bldg. Corp.*, 5 Labor Cases 61,089.

upon the tax necessarily fell. There was no interstate commerce to be burdened. The cases therefore are definitely in point and should be decisive of this case.

The one instance in which this Court may have failed to recognize the distinction between maintenance of a highway and carriage over it is the case of *Pedersen* v. *Del. Lack. & West. R. R. Co.*, 229 U. S. 146, wherein it was held that an employee of a Railroad Company who was carrying bolts to be used in the repair of a bridge over which the Railroad transported interstate traffic, was engaged in commerce within the meaning of the Federal Employers Liability Act. This Court held, three judges dissenting, the work to be "so closely related to such commerce as to be in practice and in legal contemplation a part of it."

We find that in that case neither the *Henderson Bridge Company* case nor *Lake Superior & Miss. R. R. Co.* v. *U. S., supra,* were called to the attention of this Court. Nor was any attempt made to point out the fundamental distinction between the business of maintaining a road and that of carriage over it. In view of the failure to call attention to the combination of the two separate functions in a single corporate entity heretofore referred to it is not strange that the distinction was lost sight of.

Since the *Pedersen* case was decided other cases under the same Act which cited it have been reversed or overruled by the Court, *Chicago & E. I. R. Co.* v. *Industrial Commission of Illinois*, 284 U. S. 296, *Chicago & N. W. Ry. Co.* v. *Bolle*, 284 U. S. 74, 79; *Illinois Central R. Co.* v. *Cousins*, 241 U. S. 641, and it has been questioned whether it is still the law. *Rader* v. *Baltimore & O. R. Co.*, 108 Fed. 2d 980, C. C. A. 7.

In asking this Court to adopt a rule promulgated in construing the Employers' Liability Act that an employee is engaged in transportation where his work is "so closely related to such transportation as to be practically a part of it", the petitioners and the Administrator are demanding

judicial legislation. The very phrase "closely related to" involves an admission that the occupation is not in fact transportation. It is also admitted in the statement of the rule invoked that the occupation is not "actually" a part of transportation but only "practically" a part. This rule affords a typical illustration of that "retrospective expansion of meaning which properly deserves the stigma of judicial legislation" which this Court clearly indicated in *Kirschbaum* v. *Walling, supra,* would not be indulged in in construing the Act here involved.

Here we have unmistakable evidence that Congress did not intend to include occupations "affecting" or "necessary to" commerce, as distinguished from production (*Supra,* Subdivision A). In the face of that affirmative evidence of Congressional intent it would seem to be contrary to the will of Congress for this Court to engraft upon the definition of "commerce" occupations or industries "closely related" thereto. The effect of such an action cannot be foretold. The Employers' Liability Act involves simply corporations engaged in transportation by rail. This Act covers all commerce, including trade, transportation, transmission or communication. What allied industries and occupations might be included within the Act, if this Court construes it to include employees engaged in occupations "closely related to" commerce is difficult to imagine. But, in a matter so grave, if there be doubt about the intent of Congress, we submit that it would be orderly procedure for this Court, having demonstrated the power to regulate (*United States* v. *Darby,* 312 U. S. 100), to leave it to Congress to settle a serious doubt about the extent of the coverage. *Federal Trade Commission* v. *Bunte Bros., supra.*

Furthermore, with all due respect, it is not true that the operation and maintenance of a bridge or highway is so closely related to the transportation over the same as to be, as stated in the *Pedersen* case, in "legal contemplation"

a part of it. Subsequent to that decision, this Court held to the contrary. (*Detroit International Bridge Company* v. *Michigan*, 294 U. S. 83.) The business of owning and operating a toll bridge not being, in law, interstate commerce, it therefore cannot be, in "legal contemplation," part of such commerce.[13]

The Employers Liability Act applies to employees of a railroad corporation engaged in "such commerce", by which is meant the interstate transportation by rail carried on by the employer. In the *Pedersen* case this Court said: "The true test always is: Is the work in question a part of the interstate commerce in which the carrier is engaged?" The Court thought the employee in that case to be engaged in such commerce because it considered the employees' services indispensable to the commerce in which the employer was engaging. Here the employer is not engaged in commerce at all and no employee who carries on his business can be so engaged. The New York Court of Appeals, in a case under the Fair Labor Standards Act involving an employee repairing a railroad bridge, found no difficulty in sustaining such a distinction of the *Pedersen* case by a lower Court, and held that the employee was not covered by this Act. (*Pedersen* v. *Fitzgerald Construction Co.*, 288 N. Y. 211 (Memo.) affirming without opinion 262 App. Div. 665; Cert. Applied for Sept. 14, 1942, Docket No. 396.)

Counsel for petitioners apologizes for the Courts below because their decisions were rendered prior to the decision of this Court in *Kirschbaum* v. *Walling, supra*. No apology is necessary. As we have pointed out, the decision in that case is not here in point, and since that time both the

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[13] The failure of this Court to include "related" occupations in the coverage of this Act would not have the effect of unsettling the construction of the Employers Liability Act. See the amendment of August 11, 1913 to that Act, 53 Stat. 1404. *Kirschbaum* v. *Walling, supra*.

District Judge in *Cochran* v. *Florida Nat. Bldg. Corporation*, 45 Fed. Sup. 830, and the Circuit Court of Appeals in *Johnson* v. *Dallas Downtown Development Co.*, 5 Wage Hour Rept. 984 (C. C. A. 5), who respectively decided this case have deceided other cases in which this case is held not to be in conflict with the *Kirschbaum* case.

The decision of the Courts below is clearly correct and should be affirmed.

POINT II

Answering the briefs of petitioners and the administrator.

A

The Petitioners' Brief.

Most of the arguments in petitioners' brief have already been disposed of.

On page 9 petitioners quote from a statement of this Court in *United States* v. *Darby, supra* to the effect that the purpose of the present regulation was that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions. Obviously the final test of construction is the language used in the sections, heretofore referred to, containing the actual regulatory provisions, and in the definitions. Were the purpose alone to be considered, we could well argue that regulation of employees of toll roads was not covered by the Act. There is no competition between toll roads, and if there were it is difficult to see how wages and hours paid their employees could have an injurious effect on competitive prices of goods sold in interstate commerce.

Warren-Bradshaw Drilling Co. v. *Hall*, decided by this Court at this term (No. 21) and *Fleming* v. *Hawkeye*

Pearl Buttes Co. (C. C. 8) 1940, 113 Fed. (2d) 52, 56 were cases involving production in which the employees in question were held to be engaged in occupations necessary to production. While counsel concedes this, it is argued that the cases cited exemplify a "liberal construction". What the Courts did was to carry out the intent of Congress in regulating not simply production, but also occupations necessary to production.

On page 11 petitioners cite *Atkocus* v. *Terker*, 4 Labor Cases 60,724 (Municipal Court of The City of New York), in which a watchman employed by a contractor repairing a bridge was held to be within the Act. That case was decided in September 1941. In November 1941 the Appellate Division of the Supreme Court, State of New York, an Appellate Court of that State, decided *Pedersen* v. *J. F. Fitzgerald Construction Company*, 262 App. Div. 665, which is squarely in conflict with *Atkocus* v. *Terker*. The *Pedersen* case was affirmed, without opinion, by the New York Court of Appeals (288 N. Y. 211, Memo.), and an application for a writ of certiorari is pending in this Court. The case cited by respondent does not, therefore, represent the views of the highest court of New York State and must be regarded as having been overruled by it. Furthermore, in the *Atkocus* case there is no discussion at all of the Fair Labor Standards Act: There is simply a quotation from *People* v. *Hudson River Connecting Railroad Corporation*, 228 N. Y. 203, certiorari denied 254 U. S. 631. In the *Hudson River Connecting Railroad Corporation* case Congress had by special act authorized the construction of a bridge over the Hudson River, subject to the approval of the War Department, and by further special act extended the time for such construction. The corporation, created under authority of an act of the New York Legislature to construct the bridge, had at great expense prepared and filed plans which had been approved by the Secretary of War as required by the Federal Acts. Thereafter, the New York State Legislature passed

an act repealing its previous act authorizing the incorporation of the company in question, and in effect prohibited the erection of the bridge whose construction had been authorized by act of Congress and approved by the Secretary of War. The Court of Appeals held the repealing act to be void and refused to enjoin at the instance of the State of New York the construction of the bridge. The mere statement of this case reveals its inapplicability.

On pages 12 and 13 petitioners cite several decisions of this Court construing the Federal Employers Liability Act, including *Kinzell* v. *Chicago M. & S. P. Ry. Co.*, 250 U. S. 130, wherein this Court said that "the doing of work which has for its immediate purpose the furthering of the conduct of interstate commerce constitutes an employment in such commerce within the meaning of the Act."

In suggesting that this test be adopted petitioners are again pleading for judicial legislation. If Congress, in framing the Act, deliberately excluded occupations "affecting" or "necessary to" commerce, there can be no reason to suppose that it intended to include occupations "furthering" such commerce. Nor is it a part of the judicial function "to restore to the Act what Congress has taken out of it." *Cudahy Packing Co.* v. *Holland*, 315 U. S. 357, 367. Had Congress, in framing the Act, chosen to extend the definition of "Commerce" or "transportation" beyond its ordinary connotation it could have done so.[11]

In all these Employers Liability cases this Court was construing the Employers Liability Act, not the Fair Labor

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[11] Cf. Definition of "transportation" in the Interstate Commerce Act, U.S.C.A., Title 49, Sec. 1, sub. 3 and *C.C.C. & St. L. Ry.* v. *Dettlebach*, 239 U. S. 588 and *Sou. Ry.* v. *Prescott*, 240 U. S. 632. As to definition of "commerce" in this and other acts see discussions in *Federal Trade Commission* v. *Bunte*, 312 U. S. 349, 351; *Walling* v. *Goldblatt Bros.*, 128 Fed. (2d) 778, 781; *Gerdert* v. *Certified Poultry & Egg Co.*, 38 F. Supp. 964, 968-9; *Eddings* v. *Southern Dairies*, 42 F. Supp. 664, 669.

Standards Act. Arbitrarily to engraft that body of law upon the latter Act, which is entirely different in purpose and structure, simply because of some similarity of language in one phrase, would seem to be an unsound procedure and, if adopted, would seem to preclude the courts from ascertaining the intent of Congress by a study of the purpose, the structure, the language used, and the legislative history of the particular act before them. As stated in *Federal Trade Commission* v. *Buntt*, *supra*, at page 353:

> "Translation of an implication drawn from the special aspects of one statute to a totally different statute is treacherous business. The Interstate Commerce Act and the Federal Trade Commission Act are widely disparate in their historic settings, in the enterprises which they affect, in the range of control they exercise, and in the relation of these controls to the functioning of the federal system."

The other Employers Liability cases referred to by counsel are disposed of by the foregoing discussion and our comments on the *Pedersen* case, *supra*, page 20.

The reference in petitioners' brief (p. 14) to the Act authorizing the Secretary of War to regulate tolls on bridges crossing navigable waters and the citation of *Clarksburg & Columbus Short Route Bridge Co.* v. *Woodring*, 89 Fed. (2d) 788, 794 is not apropos. The power of Congress to regulate the operation of such bridges is not disputed. The question is, has it been exercised in this case?

B

The Brief on Behalf of the Administrator.

The Administrator first points out that since neither the waterborne commerce on the intercoastal waterway nor the interstate transportation along the toll road could proceed without the performance of petitioners' duties, respondent's business is subject to regulation by Con-

gress; in other words that Congress has power to regulate the activities in question. The question of power is not raised, so the argument falls.

The Administrator then points out that the *Henderson Bridge Company* case and the *Detroit Bridge Company* case do not imply lack of authority to regulate and suggests that in the State tax cases the question involved is whether a particular exercise of state power must be deemed in conflict with the paramount authority of Congress to regulate. We have heretofore pointed out that the particular State tax cases upon which we rely did not turn on this point, but on the question as to whether or not the business of the Companies was or was not interstate commerce.

It is then argued, pages 8 and 9, that the State tax cases do not assist us in ascertaining the coverage of a Federal Statute which embodies independent congressional policies and objectives, and it is suggested in footnote 6 that respondent's business is not less closely related to the "stream of commerce" than the activities involved in the cases of *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1 and *Stafford* v. *Wallace*, 258 U. S. 495, both, incidentally, cases involving "power." But in the last page of the brief the Administrator is careful to point out that the "stream of commerce" doctrine is not here applicable.

It is also suggested, page 9, that even if the State tax cases are relevant in determining whether respondent's business is interstate commerce, the coverage of this Act, addressed as it is to the activities of the employees, must be measured by different standards. The standard is whether or not the employees are engaged in interstate commerce (in this particular case interstate transportation). In this particular Act this question has been left by Congress to this Court, *United States* v. *Darby, supra* and *Kirschbaum* v. *Walling, supra*, and this Court has, in decisions above referred to, held that a business such as

that of this employer is not interstate. The occupation of the employees, concededly carrying on parts of the employer's business, cannot be denominated as interstate without involving a determination that the business of the employer is, *pro tanto*, interstate; and such a determination would run counter to settled law.

The suggestion of the Administrator that the "stream of commerce" cases should here apply latitudinally, as well as longitudinally as he has urged in *Walling* v. *Jacksonville Paper Company* No. 336, this Term, would indicate disagreement with the statements of this Court in *Kirschbaum* v. *Walling, supra* that Congress chose not to enter areas which it might have occupied, and with the intimation in that same case that in the absence of reasonably explicit expression by Congress of intent to control, the assumption will not be indulged in of an implied intent to enter fields affecting the duality of our system of government.

Implicit, if not expressed in the brief of the Administrator would seem to be the theory that the term "commerce" in the Act should be construed by this Court to include every activity which may have been held subject to Federal regulatory power under the commerce clause. This alone explains the citation of so many cases involving power in a case involving simply construction.

After discussing and citing Employers Liability Act cases (pp. 10-11), the Administrator intimates that an affirmance would contract the phrase "in commerce" to include only employees physically participating in the movement of goods across state lines. Obviously no such extreme result is contended for. This Court has already held, *Overnight Motor Trans. Co.* v. *Missel*, 316 U. S. 572, that a rate clerk employed by an interstate motor carrier was engaged in commerce. His occupation was directly concerned with charges for the carriage of goods across state lines. That employee was actually engaged in the

transportation business, not in an occupation simply related thereto.

The second sentence on page 12 of the Administrator's brief reads as follows:

> "Nor is there any evidence to indicate that Congress intended that employees who bear a 'necessary' relation to production for commerce—a process once removed from actual commerce—would be covered by the Act while those who bear a considerably closer relation to the primary process of interstate commerce itself would not be covered."

The evidence of the intent of Congress to exclude from the definition of commerce occupations simply "necessary" thereto, is found in the fact of such *exclusion* coupled with the *inclusion* of "necessary" occupations in the definition of "produced" (*Cudahy Packing Co.* v. *Holland*, 315 U. S. 357, 364), and also in the legislative history of the Act heretofore referred to.

The Administrator intimates (p. 12) that "commerce" is a broader term than "transportation" and cites *Chicago & N. W. Ry. Co.* v. *Bolle*, 284 U. S. 74, a case under the Federal Employers Liability Act. That Act (35 Stat. 65, U.S.C.A., Sec. 51) applies to common carriers by railroad engaging (1) "in commerce" and imposes liability (2) in favor of persons injured while employed by such carrier "in such commerce". To apply Employers Liability principles here it is necessary to bring the case within (1) before passing smoothly to the consideration of (2), as the Administrator has done. In cases under that Act this Court has held that the only phase of commerce which could possibly have been involved was "transportation" (*Chicago & E. I. R. Co.* v. *Commission*, 284 U. S. 296). Neither the Administrator nor the petitioners have at any time throughout this case suggested that the occupation of the petitioners could be even remotely related to any other phase of commerce than "transportation". This respondent does not engage in transportation.

On page 13 the Administrator calls attention to *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386. There is no question but what the redcap assisting in the movement of passengers and carrying their baggage was engaged in transportation. The only question in that case might have been when the interstate phase of the transportation commenced or was completed.

On page 13 the Administrator cites a number of cases under this Act in the lower Federal courts and in some State courts in support of the proposition that maintenance employees, watchmen and office and clerical workers are covered by the Act. Of these *Lorenzetti* v. *American Trust Co.*, 45 F. Supp. 128 (N. D. Calif.), *Stoike* v. *First National Bank of the City of New York*,[15] 5 Wage Hour Rept. 560, 264 App. Div. 585 (appeal to the New York Court of Appeals pending) and *Fleming* v. *American Stores Co.* (E. D. Penn.), 42 F. Supp. 511 involved employees maintaining office buildings in which some of the occupants were engaged in interstate commerce, but not in production. These three cases are contrary to the weight of authority in the District courts and the State courts[16] and to the recent decision of the

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[15] *Stoike* v. *First National Bank of the City of New York*, *supra*, distinguishes *Pedersen* v. *Fitzgerald Contracting Co.*, referred to *supra*, pages 22, 24, upon the ground that in the latter case the employees were engaged in construction of bridges and not in the repair thereof. The majority opinion of the Appellate Division in the latter case states that the employees were engaged in the "repair of bridge superstructures". The record on appeal in the New York Court of Appeals shows that both questions were raised.

[16] *Lofther* v. *First National Bank of Chicago* (N. D. Ill. October 1942) 6 Labor Cases 61,259; *Cochran* v. *Florida National Bank* (S. D. Fla. July 8, 1942), 45 Fed. Supp. 830; *Tate* v. *Empire Building Co.* (E. D. Tenn. 1942), 5 Wage Hour Rept. 475, 5 Labor Cases 61,089; *Johnson* v. *Great National Life Insurance Co.* (Texas Civ. App.), 5 Wage Hour Rept. 968; *Bartholome* v. *Balt. Fire Patrol & Dispatch Corporation* (D. C. Md.), 6 Wage Hour Rept. 21; *Johnson* v. *Filstow, Inc.* (S. D. Fla., March 1942), 43 Fed. Supp 930.

Circuit Court of Appeals in *Johnson* v. *Dallas Downtown Development Co.* (December 10, 1942, C. C. A. 5), 5 Wage Hour Rept. 984.

Atlantic Co. v. *Walling*, 5 Wage Hour Rept. 6 Labor Cases 61,150 (C. C. A. 5) involved production. In *Mortensen* v. *Western Light & Telephone Co.*, 42 F. Supp. 319 the employee was engaged in the operation of an interstate telephone system. In *Steger* v. *Beard & Stone Electric Co.*, 4 Wage Hour Rept. 411, 4 Labor Cases 60,643 and *Fleming* v. *Kull*, 4 Wage Hour Rept. 411 (E. D., Texas) it does not appear whether commerce or production of goods was involved. The duties of the employee in *Spinner* v. *Waterways Fuel & Dock Co.*, 41 N. E. (2d) 144, (Ohio Ct. App.), included the operation of a digger-boat, the function of which was to load and unload coal moving in interstate commerce. The nature of the employee's occupation in *Fleming* v. *Capital Broadcasting Co.*, 4 Wage Hour Rept. 124 is not disclosed. In *Walling* v. *Helena-Glendale Ferry Co.*, 5 Wage Hour Rept. 320; 5 Labor Cases 60,994 (E. D. Ark.) the employees collected transportation charges for a company operating an interstate ferry or hauled coal burned by the ferry and the ferry was of course engaged in interstate commerce.

Where the question is whether a maintenance employee is engaged "in commerce" as distinguished from the "production of goods for commerce" or occupations "necessary" thereto, the weight of authority in the lower Federal courts and in the State courts is that he is not covered by the Act. The cases cited in footnote 16 establish that the Act does not apply to employees such as petitioners in the case at bar who merely "affect" commerce or are "related" or "necessary" thereto. See also *Jewel Tea Co.* v. *Williams*, 118 Fed. (2d) 202 (C. C. A. 10); *Jax Beer Co.* v. *Redfern*, 124 Fed. (2d) 172, 174 (C. C. A. 5); *Swift & Company* v. *Wilkerson*, 124 Fed. (2d) 176 (C. C. A. 5); *Gerdert* v. *Certified Poultry & Egg Co., Inc.*, 38 F. Supp.

964 (S. D. Fla.); *Eddings* v. *Southern Dairies*, 42 F. Supp. 664 (E. D. S. C.); *Walling* v. *Goldblatt Bros.*, 128 Fed. (2d) 778, 781 (C. C. A. 7); *Walling* v. *Mutual Wholesale Food & Supply Co.*, 46 F. Supp. 939, 945 (D. C. Minn.).

CONCLUSION

It is submitted that the petitioners, engaged in the operation and maintenance of this toll road, are performing a function which historically, in practice and in law has "nothing to do with the transportation thereon", (*Lake Superior and Miss. R. R. Co.* v. *U. S.*, *supra*) and that neither they nor their employer are engaged in interstate commerce. Petitioners and the Administrator seek to overturn a long established historically founded rule of law, and in effect to read into the Act its application to occupations affecting, related to or necessary to commerce, a construction which is not warranted by the language, scheme or structure of the Act within the language of the Act and which has been rejected by Congress.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

ROSWELL P. C. MAY,
W. GREGORY SMITH,
Counsel for Respondent.

Of Counsel

BLEAKLEY, PLATT & WALKER,
120 Broadway,
New York, N. Y.

SMITH & AXTELL,
Jacksonville, Florida.

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APPENDIX A

Excerpts from Fair Labor Standards Act of 1938
52 Stat. 1060, U. S. Code Tit. 29, Secs. 201-219

"Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Sec. 3. As used in this Act—

* * *

(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

* * *

(j) 'Produced' means produced, manufactured, mind, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

* * *

Sec. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

* * *

Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

* * *

Sec. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

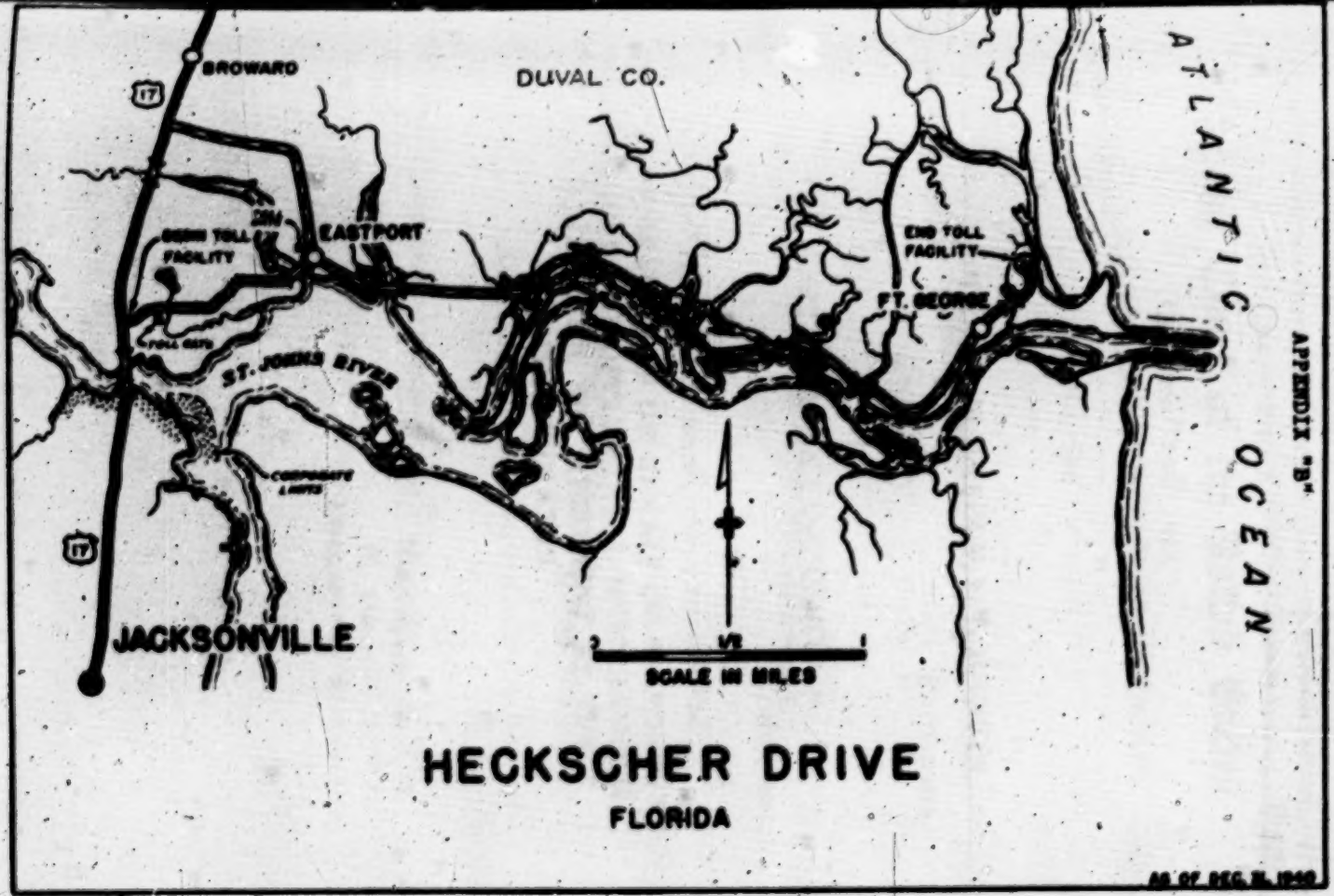
(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 8. (a) With a view to carrying out the policy of this Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classifications therein."


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